SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT APPEAL NO. 964 OF 2006

BETWEEN

V. Gopala Krishna Murthy

.....Appellant

And

Government of Andhra Pradesh,
Rep. by its Secretary,
Revenue Department,
Hyderabad & others.

.....Respondents

Counsel for the appellant : Shri V.S.R. Anjaneyulu

Counsel for the respondents : Government Pleader for Assignments

Dated: 20.09.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 05.01.2006 passed by the learned Single Judge in Writ Petition No.297 of 2006, whereby he refused to nullify endorsement dated 08.12.2005 issued by Collector, Krishna District declining the appellant's prayer for assignment of agricultural land/house site in Ramavarappadu Village or elsewhere by being treated as a freedom fighter.

Heard learned counsel for the parties and perused the record.

A perusal of the order under challenge shows that the learned Single Judge dismissed the writ petition by simply observing that as per the endorsement made by Collector, Krishna District, no land is available for assignment to the appellant as per his entitlement as a freedom fighter.

Learned counsel for the appellant invited our attention to the averments contained in paragraph 6 of the affidavit of his client to show that different parcels of land are available and submitted that without requiring the respondents to file counter-affidavit to admit or controvert the averments contained in that paragraph, the learned Single Judge could not have out-rightly dismissed the writ petition.

Learned Government Pleader for Assignments candidly stated that no counter-affidavit was filed on behalf of the respondents. According to her, that exercise could not be undertaken because the writ petition was disposed of at the threshold.

In our opinion, in a matter like the present one, where a freedom fighter was compelled to seek intervention of the Court twice over for allotment of land in accordance with the policy framed by the State Government, the learned Single Judge should not have non-suited him without even calling upon the respondents to file counter. If the averments contained in paragraph 6 of the affidavit filed by the appellant are taken on their face value, it is impossible to sustain the endorsement made by the Collector on 08.12.2005.

We would have finally adjudicated the matter after calling upon the respondents to file counter-affidavit, but keeping in view the fact that such an exercise may result in depriving the looser party of its right to avail remedy of appeal, we refrain from adopting that course and deem it proper to remand the case to the Single Bench for a comprehensive adjudication of the issue raised in the writ petition.

In the result, the appeal is allowed. The order under challenge is set aside. The writ petition filed by the petitioner is admitted for hearing. The respondents are directed to file counter-affidavit within six weeks.

The main petition be listed before the Single Bench for final hearing on 16.11.2006.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

20.09.2006
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